

Kenneth R. Davis II, OSB No. 971132
davisk@lanepowell.com
LANE POWELL PC
601 SW Second Avenue, Suite 2100
Portland, Oregon 97204-3158
Telephone: 503.778.2100
Facsimile: 503.778.2200

Attorneys for Plaintiff Chevron U.S.A., Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

CHEVRON U.S.A. INC.,

No. 1:10-CV-3063-CL

Plaintiff,

v.

PELICAN BUTTE OIL, LLC, an inactive
Oregon Limited Liability Company,

Defendant.

Plaintiff Chevron U.S.A Inc.'s
**MEMORANDUM IN SUPPORT OF
MOTION FOR ENTRY OF DEFAULT**

I. INTRODUCTION

Chevron U.S.A. Inc. ("Chevron" or "Plaintiff") respectfully requests that this Court enter default in this matter against Defendant Pelican Butte Oil, LLC ("Defendant") on the ground that defendant has failed to appear or otherwise respond to the Complaint within the time prescribed by Fed. R. Civ. P. 55. (Declaration of Kenneth R. Davis II in Support of Plaintiff's Motion for Entry of Default ("Davis Decl."), ¶¶ 3, 4.)

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II. FACTS

Defendant operated and/or leased the gas station located at 8600 Highway 97 South, Klamath Falls, Oregon 97603. During relevant times, the defendant sold products and/or services under trademarks and/or trade dress owned by Chevron at this Klamath Falls location, without consent or approval from Chevron.

Chevron filed the above-entitled action on July 15, 2010. (Davis Decl., ¶ 2.) Chevron served the Summons and Complaint on defendant's registered agent for service of process on July 20, 2010, by leaving such true copy, personally and in person, at the office of the registered agent for Defendant; and on July 21, 2010, mailing a copy of the Summons and Complaint to the office of the registered agent for Defendant. (Davis Decl., ¶ 3)

Defendant did not file an answer or otherwise appear within twenty-one (21) days after service of the Summons and Complaint and has never filed an answer. (Davis Decl., ¶¶ 4, 5.) Neither Chevron nor the Court have granted defendant any extension of time to respond to the Complaint. (Davis Decl., ¶ 6.)

Defendant is a corporate entity and is, therefore, not an infant, incompetent person, in military service, or otherwise exempted under the Soldier's and Sailor's Civil Relief Act of 1940.

On November 5, 2010, counsel for Chevron sent defendant a letter via overnight delivery further notifying defendant of its obligation to appear. (Davis Decl., ¶ 7.) On November 8, 2010, the registered agent for Defendant e-mailed counsel for Chevron stating that the Corporation Division Report showed a dissolution of Pelican Butte Oil, LLC in April of 2009. He did not indicate that he either represented Defendant or whether Defendant continued to do business. In fact, a search indicates that the property remains in the name of Defendant (Davis Decl., ¶¶ 8, 9.)

III. ARGUMENT

A. Default Should be Entered as Defendant Has Failed to Plead or Otherwise Defend.

Default “shall” be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made apparent by affidavit or otherwise. Fed. R. Civ. P. 55(a). Defendant has failed to plead or otherwise defend, warranting a default judgment.

IV. CONCLUSION

For the foregoing reasons, Chevron requests an order of default be entered against Defendant Pelican Butte Oil, LLC.

DATED: November 11, 2010

LANE POWELL PC

By s/Kenneth R. Davis II
Kenneth R. Davis II, OSB No. 971132
davisk@lanepowell.com
Telephone: 503.778.2121
Attorneys for Plaintiff Chevron U.S.A., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2010, I caused to be served a copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT on the following person(s) in the manner indicated below at the following address(es):

Matthew Sutton, Registered Agent for
PELICAN BUTTE OIL, LLC
205 Crater Lake Avenue
Medford, OR 97502

- ☐ by **CM/ECF**
- ☒ by **Electronic Mail**
- ☐ by **Facsimile Transmission**
- ☒ by **First Class Mail**
- ☐ by **Hand Delivery**
- ☐ by **Overnight Delivery**

/Kenneth R. Davis II

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